IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Rajesh (minor) through his father & Natural guardian Prem Chand. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 1174/2006

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Date of Order: September 08, 2006]

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Rakesh Matoria, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

Petitioner Prem Chand, being the guardian of his minor son Rajesh, filed an application before the learned Special Judge, N.D.P.S. Cases, Hanumangarh (for short, "the trial Court" hereinafter) under Section 451 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) seeking interim custody of jeep No.HR.24A-4996, which was seized by the police for an offence under Section 8/15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act" hereinafter) while it was transporting 60 kgs of poppy straw, which is a commercial quantity as defined in the Schedule

attached to the NDPS Act. The said application stood dismissed by the trial Court vide order dated 14-7-2006, hence this criminal miscellaneous petition.

I have heard learned counsel for the parties and perused the impugned order.

The vehicle in question is registered in the name of Rajesh who is the minor son of petitioner Prem Chand. Petitioner Rajesh, who is a minor, filed the instant petition through his father and natural guardian Prem Chand, who was found transporting 60 kgs of poppy straw and is the principal accused in the case. The expression "owner" has been defined in Section 2 (3) of the Motor Vehicles Act, 1988 (for short, "the MV Act" hereinafter), which provides that "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement. Thus, from the definition of the expression "owner", it is clear that if a vehicle is registered in the name of a minor, the guardian of such minor is the owner of such vehicle. In the instant case, the vehicle is registered in the name of minor Rajesh an his guardian is petitioner Prem Chand. Thus, in the instant case, Prem Chand is the owner of the vehicle in view of

the definition of the "owner" as provided under Section 2 (3) of the MV Act.

Section 60 of the NDPS Act pertains to liability of illicit drugs, substances, plants, articles and conveyances to confiscation. Sub-section (3) of Section 60 of the NDPS Act provides that any animal or conveyance used in carrying any narcotic drug or psychotropic substances or controlled substances, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

In the instant case, owner of the vehicle himself is the principal accused in the case as he was found transporting the poppy straw weighing 60 kgs which is a commercial quantity, therefore, it cannot be said that the vehicle in question was used as a conveyance for transport the poppy straw without the knowledge or connivance of the owner of the vehicle. In the instant case, the owner of the vehicle himself was transporting the commercial quantity of the poppy straw. In the circumstances, therefore, prima facie the vehicle in question is liable to be confiscated under Section 60 of the NDPS Act.

Thus, the trial Court was justified in declining to release the vehicle on interim custody.

In this view of the matter, I do not find any merit in the criminal miscellaneous petition and it is dismissed accordingly.

(H.R. PANWAR), J.

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